

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

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JUDGMENT

Yaseen Khan
vs.
Mana and others.

S.B.CIVIL SECOND APPEAL NO.119/2002
UNDER SECTION 100 CPC AGAINST THE
JUDGMENT AND DECREE DATED 14.3.2002
PASSED BY SHRI GR Mulchandani,
ADDITIONAL DISTRICT JUDGE, BALI IN
CIVIL FIRST APPEAL NO.3/1998.

DATE OF JUDGMENT :: 20.3.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. A Samdariya, for the appellant.

Mr. SD Purohit, for the respondents.

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BY THE COURT:

Heard learned counsel for the parties.

The appellant/plaintiff's suit for injunction was dismissed by the trial court after holding that the suit property is not covered by the patta produced by the plaintiff and the plaintiff has failed to prove his

possession. The appeal against the judgment and decree of the trial court dated 6.3.1998 was also dismissed by the first appellate court vide judgment and decree dated 14.3.2002. Hence, this second appeal.

According to the learned counsel for the appellant, the plaintiff produced the patta of the disputed property and that patta was issued in the year 1985. The plaintiff was in possession of the suit property whereas the defendant came out with a patta which was issued for agriculture land and that land is not the same land for which the plaintiff filed the suit.

According to learned counsel for the appellant, the first appellate court, which is the final court for recording the finding of fact, cursorily decided the appeal and did not discuss the appellant's evidence at all. Therefore, the first appellate court committed serious error of law. Learned counsel for the appellant also read over the statements of the witnesses in support of his plea that the suit property is covered by the patta produced by the plaintiff and not covered by the patta produced by the defendant. It is also submitted that the plaintiff produced witness PW5 who categorically stated that the possession was delivered to the plaintiff in the year 1985.

Learned counsel for the appellant submits that the patta is a public document and for that purpose, he relied upon the judgment of this Court reported in 1970 WLN 313.

I have considered the submissions of learned counsel

for the parties and perused the reasons given by the two courts below as also the evidence of the parties.

The plaintiff filed the suit for injunction only with the plea that he is in possession of the property. Both the courts below held that the property is in possession of the defendant and the plaintiff failed to prove that the same property is covered by the patta of the plaintiff. This is a finding of fact recorded by the trial court and upheld by the first appellate court.

Even after going through the evidence produced by the parties, this Court is also of the view that the plaintiff failed to prove the exact location of his land by producing the evidence. If we go by the plea of the plaintiff, then according to the plaintiff, the land in dispute is an open plot where some material of the plaintiff was lying only. The plaintiff also specifically pleaded that his stone slabs were lying on the plot whereas the defendant came out with a specific case that he has constructed a boundary wall by stone slabs with one door over his plot. That fact has been admitted by the plaintiff in his statement. It is not the case of the plaintiff that he constructed boundary wall by stone slabs and kept the door. That fact itself is sufficient to prove that the plaintiff failed to prove his possession.

So far as the patta being a public document is concerned, the argument is irrelevant in a suit for injunction and particularly in the present case, where the

plaintiff is not seeking declaration of title and this is not suit for possession. A person may have the title but if he is out of possession and defendant is in settled possession, the decree for mere prohibitory injunction cannot be granted.

In view of the above, I do not find any merit in this appeal and the same is hereby dismissed.

S.Phophaliya

(PRAKASH TATIA), J.